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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,932	02/12/2004	Heiko Schmidt	A-8923.RF	2367

7590 01/23/2007  
Stewart L. Gitler, Esq.  
HOFFMAN, WASSON & GITLER, PC  
Suite 522  
2461 South Clark Street  
Arlington, VA 22202

EXAMINER
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OMGBA, ESSAMA

ART UNIT	PAPER NUMBER
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3726

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/23/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	Application No. 10/776,932	Applicant(s) SCHMIDT, HEIKO	
	Examiner Essama Omgba	Art Unit 3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2006.  
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.  
 4a) Of the above claim(s) 2-22 and 24 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1, 23 and 25-29 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☒ All b) ☐ Some \* c) ☐ None of:  
 1. ☒ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
 \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) ☐ Notice of Informal Patent Application  
 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of the invention of Species B, readable on claims 1, 23 and 25-29, in the reply filed on November 27, 2006 is acknowledged. Applicant should note that claim 23 has not been considered as readable upon Species B since it depends on claim 22 which Applicant has identified as being part of non-elected Species A.

### ***Specification***

2. The abstract of the disclosure is objected to because in line 1, the phrase "The invention relates to" should be deleted. Correction is required. See MPEP § 608.01(b).
3. The disclosure is objected to because of the following informalities: in paragraph [0001], line 2, the expression "tog machine" is not clear; in paragraph [0004], line 10, "he" should read --the--.

Also the specification does not include a brief description of figure 10.

Appropriate correction is required.

### ***Claim Objections***

4. Claims 23, 25 and 27-29 are objected to because of the following informalities: the term "element" in the claims should read --device-- in order to use consistent language throughout the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 23 and 25-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 23 and 26 recite the limitation "the die" in lines 5 and 3 respectively.

There is insufficient antecedent basis for this limitation in the claims.

Claim 27 recites the limitation "the press ram" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Swanson et al. (US Patent 6,148,507).

With regards to claim 1, Swanson et al. discloses a hydraulic processing machine for processing workpieces (col. 2, lines 61-67), the machine comprising a first tool part (42, 43, 44, 45, 22, 23) located on a first tong arm, an opposing second tong

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arm (24, 25, 26, see figure 4), a hydraulic actuating device 62, a closing drive 61 and means for coupling the first tool part with the hydraulic actuating device (col. 3, lines 38-63 and col. 4, lines 3-11).

For claim 26, start switch 61 for low pressure hydraulic circuit is considered an auxiliary drive.

For claim 28, see column 4, lines 41-43.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanson et al. in view of Speller (US Patent 2,365,147) or Slasinski (US Patent 4,856,316).

Swanson et al. discloses a hydraulic processing machine as shown above. Although Swanson et al.'s machine does not use a toggle joint drive, however such processing machines with a toggle drive are old and well known in the art as attested by Speller, see column 2 of page 1, lines 13-16 or Slasinski, see figures 2-4. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made that providing the processing machine of Swanson et al. with a hydraulic or a toggle drive is an obvious matter of design choice.

***Allowable Subject Matter***

11. The following claim drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to Applicant for consideration:

Claim 23 (Currently amended) The processing tong as claimed in claim 1 wherein the actuating element device is ~~moved~~ adapted to move between a starting position, in which the actuating element device is offset from the axis of the a reciprocating die and a working position, in which the actuating element device is ~~located on one~~ aligned with the axis with of the reciprocating die.

12. Claims 23, 25 and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***


13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Essama Omgba  
Primary Examiner  
Art Unit 3726

eo  
January 16, 2007